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ATTORNEY GENERALS OFFICE
HELENA, MONTANAMONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTYCITY OF HARDIN AND TWO RIVERS
AUTHORITY,

Plaintiffs,

v.

STATE OF MONTANA AND THE
MONTANA DEPARTMENT OF
CORRECTIONS,

Defendants.

No. DV- ^B 207-955

Judge

JEFFREY M. SHERLOCK
~~Presiding Judge~~

SUMMONS

THE STATE OF MONTANA SENDS GREETINGS
TO THE ABOVE-NAMED DEFENDANT: STATE OF MONTANA

You are hereby summoned to answer the Complaint in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you and to file your answer and serve a copy thereof upon the plaintiff's attorney within forty (40) days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

WITNESS my hand and the seal of said Court this ¹⁰ day of December, 2007.

NANCY SWEENEY, CLERK

(COURT SEAL)

By:


Deputy Clerk

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ATTORNEYS FOR PLAINTIFFS

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JEFFREY M. SHERLOCK
 Presiding Judge

**COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**

(fx)
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PARTIES

1. Plaintiff, City of Hardin, is a city located in Big Horn County, Montana,
 and is duly incorporated under the laws of the State of Montana. The Two Rivers

Detention Center, which is the subject of this lawsuit, is located within the incorporated limits of the City of Hardin.

2. Plaintiff Two Rivers Authority ("TRA"), is a local port authority of the City of Hardin, lawfully established by resolution of the governing body in accordance with the provisions of Mont. Code Ann. §7-14-1101. TRA is the entity authorized by the City of Hardin to build, operate, manage, and maintain the Two Rivers Detention Center.

3. Defendant Montana Department of Corrections ("MDOC") is a political subdivision and agency of the State of Montana.

JURISDICTION AND VENUE

4. Jurisdiction is properly before this Court pursuant to Article VII, Section 4 of the Montana Constitution and Mont. Code Ann. § 3-5-302.

5. Venue is proper in Lewis and Clark County pursuant to Mont. Code Ann. § 25-2-126.

FACTS

6. This action is necessary to protect and preserve the investment made by the City of Hardin and TRA in a twenty-seven million dollar, 454-bed detention facility known as the Two Rivers Detention Center, and to prevent and remedy the injury resulting to Plaintiffs from the actions taken by Defendants.

7. The City of Hardin has general legislative powers. Pursuant to Article XI, section 6, of the Montana Constitution, and Mont. Code Ann. § 7-1-4105(2)-(4), local government units with general powers have all powers provided or implied by law,

including the authority to enter into any contract necessary for the exercise of its power.

Further, these powers must be liberally construed. Id.

8. On or about May 18, 2004, the governing body of the City of Hardin passed Resolution 1766 which established the TRA, a local port authority for the City of Hardin, pursuant to Mont. Code Ann. § 7-14-1101(1). The purpose of the TRA is to promote, stimulate, and advance the general welfare, commerce, economic development and prosperity of the City of Hardin and its citizens.

9. One of the first projects contemplated by the City of Hardin and TRA was the construction of a multijurisdictional detention center as authorized by Mont. Code Ann. § 7-32-2201.

10. On or about August 3, 2004, the City of Hardin passed Resolution 1767 supporting the creation and construction of a "Montana Rehabilitation/Detention Center & Federal Support Facility in Hardin.

11. As a multijurisdictional detention center created under Mont. Code Ann. § 7-32-2201, the Two Rivers Detention Center is authorized to accept inmates and detainees from any agency of the federal government, and any county or city in the State of Montana. *See* Mont. Code Ann. § 7-32-2242(1).

12. On or about June 13, 2005, the Hardin City Council and members of the TRA Board of Directors met with officials from MDOC, including MDOC's Chief Legal Counsel, to discuss the proposed facility. During the meeting, MDOC officials expressed a need for additional beds and treatment facilities in Montana.

13. In December 2005, the City of Hardin and the TRA held public meetings on the proposed detention center. Local support for the facility was overwhelming.

14. In June 2006, the Montana Board of Crime Control commissioned the National Institute on Corrections to study jail overcrowding in the State of Montana. In the study, United States Marshal Dwight MacKay related as follows: "[T]here are roughly 150 to 250 state Department of Corrections (DOC) prisoners incarcerated in county jails at any given time." Further, "[h]e expressed his belief that this is due, in part, to overcrowding in the state correctional facilities and that prisoners are 'backing up' in county jails."

15. Pursuant to Mont. Code Ann. § 53-30-106(1), when the inmate population at a state correctional facility exceeds emergency capacity for 30 consecutive days, MDOC may refuse to accept new inmates until the inmate population is reduced to 95% or less of the emergency capacity. Accordingly, inmates awaiting placement in an MDOC facility "must be kept in a detention center in the jurisdiction holding them." *Id.* "In the event the jurisdiction holding the inmate is at maximum capacity, the inmate may be placed in an available detention center in another jurisdiction." *Id.*

16. Furthermore, pursuant to Mont. Code Ann. § 53-30-106(2), MDOC "may enter into contracts with the federal government, other states, or the commissioners of counties that have suitable detention centers for confining inmates committed to a correctional institution or system administered by the department, either because a correctional institution or system has exceeded its emergency capacity or because the department has no institution that is adequate for certain inmates."

17. On information and belief, Yellowstone County Detention Facility ("YCDF") has a maximum capacity of 280 beds but routinely houses over 400 inmates. YCDF contracts for approximately 20 state beds. On further information and belief,

MDOC continues to contract for beds with YDCF in spite of MDOC's statutory requirement to avoid housing state inmates in overcrowded facilities.

18. In September 2006, officials from TRA met with the MDOC Director and his staff to update them on the progress of the facility. MDOC was receptive to the project and requested additional information that was promptly provided to MDOC.

19. In May 2007, pursuant to Mont. Code Ann. § 7-32-2201(1), the City of Hardin, by and through TRA, and the City of Lodge Grass, entered into an inter-local agreement to jointly operate the Two Rivers Detention Center as a multi-jurisdictional detention center.

20. Construction of the Detention Center was completed in July 2007, and the facility was ready for occupancy by July 20, 2007.

21. Notwithstanding jail overcrowding, to date the MDOC has declined to place prisoners at the Two Rivers Detention Center, and, on information and belief, continues to house state prisoners in overcrowded detention centers throughout Montana, including Yellowstone County.

22. Pursuant to its authority under Mont. Code Ann. § 7-32-2242(1), TRA is negotiating a contract with Bureau of Indian Affairs to house adult offenders who have been arrested and are awaiting adjudication, serving sentences and/or awaiting release from custody, or convicted of tribal violations occurring in Indian Country within the Crow, Northern Cheyenne, Wind River, Blackfeet, and Spokane Indian reservations.

23. On December 3, 2007, the Montana Attorney General issued an opinion that the Plaintiffs may not confine adult felony and misdemeanor offenders who are

committed by an out-of-state jurisdiction or the federal government at the Detention Center. 53 A.G. Op. 4, December 3, 2007.

24. In contradiction of the plain language of Mont. Code Ann. §§ 7-32-2242 and 2243, the State of Montana, by and through its political subdivision, the Montana Department of Corrections, has stated that the Plaintiffs may not confine offenders who are committed by an out-of-state jurisdiction or the federal government. Based on the State of Montana's representations, agencies of the federal government and other states have refused to contract with the Plaintiffs for the confinement of prisoners at the detention center.

COUNT I - DECLARATORY RELIEF

25. Plaintiffs incorporate herein the allegations and averments set forth in the preceding paragraphs.

26. The City of Hardin is a "person" as defined by Mont. Code Ann. § 27-8-104, whose rights, status and other legal relations are affected by Mont. Code Ann. §§ 7-32-2242 and 7-32-2243.

27. The Two Rivers Authority is a "person" as defined by Mont. Code Ann. § 27-8-104, whose rights, status and other legal relations are affected by Mont. Code Ann. §§ 7-32-2242 and 7-32-2243.

28. Plaintiffs and the Defendants have a justiciable controversy, involving actual, present and existing disputes. The parties have genuine and opposing positions on this issue, which positions are direct and substantial, and of which a judicial determination will be final and conclusive.

29. Under Mont. Code Ann. § 27-8-101 et seq., Plaintiffs are entitled to an Order of the Court interpreting and declaring the Parties' respective rights and obligations under the law and Montana statutes. Plaintiffs request that this court construe Mont. Code Ann. §§ 7-32-2242 and 7-32-2243, and declare the Parties' respective rights, status and other legal relations under those statutes.

COUNT II - INJUNCTIVE RELIEF

30. Plaintiffs incorporate herein the allegations and averments set forth in the preceding paragraphs.

31. Defendants have prevented Plaintiffs from contracting with other states and federal agencies for the confinement of adult felony and misdemeanor offenders.

32. An injunction may be granted when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, or when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant. *See* Mont. Code. Ann. § 27-19-201.

33. Plaintiffs will demonstrate a likelihood of success on the merits, in that the actions of Defendants are in contravention of Montana statute.

34. Plaintiffs will suffer irreparable injury absent the issuance of a preliminary injunction, in that:

a. The Detention Center has been constructed and is immediately available for use.

b. Third-party state and federal agencies stand prepared to contract with Plaintiffs for the placement of inmates at the Detention Center, but have been precluded from doing so by the Defendants.

c. Plaintiffs have arranged a work force to operate the Detention Center; persons who will be deprived of this employment opportunity due to the Defendants' actions and, if blocked by State action, Plaintiffs will or may lose all or part of the work force.

d. Deprived of its essential function by State action, the Detention Center will face potentially catastrophic loss, including possible default on financing commitments.

35. These threatened injuries and others outweigh whatever damage the proposed injunction may cause to the Defendants.

36. An injunction, if issued, would not be adverse to the public interest, but instead would directly benefit the public by, *inter alia*, alleviating prison overcrowding and providing employment opportunity in Big Horn County.

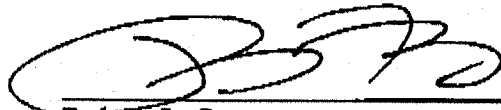
37. Plaintiffs, therefore, request that the State of Montana, acting through its agencies and political subdivisions, be preliminarily and permanently enjoined from preventing Plaintiffs from contracting with other state and federal agencies for the confinement of adult felony and misdemeanor offenders, and that the Montana Attorney General's opinion be stayed and/or the Montana Attorney General be ordered to withdraw his opinion.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

- a. That this court issue a declaratory judgment interpreting and construing Mont. Code Ann. §§ 7-32-2242 and 7-32-2243 and related statutes.
- b. That this court enjoin the State of Montana acting through its political subdivisions from preventing Plaintiffs from contracting with other state and federal agencies for the confinement of adult felony and misdemeanor offenders, and that the Montana Attorney General's opinion be stayed and/or the Montana Attorney General be ordered to withdraw his opinion.
- c. That the Court award such attorneys' fees and costs to Plaintiffs as may be awardable at law or in equity.
- d. For such other and further relief as the Court may deem just and proper.

Dated this 10th day of December, 2007.



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^B
No. DV- 2007-955

Judge Jeffrey M. Sherlock

**PLAINTIFFS' FIRST
DISCOVERY REQUESTS TO
DEFENDANTS**

Pursuant to the Montana Rules of Civil Procedure, Plaintiffs City of Hardin and Two Rivers Authority (collectively, "Plaintiffs"), request that you answer the following

discovery requests within forty-five (45) days after service hereof. These requests are continuing in nature and supplemental responses must be made pursuant to Rule 26(e)

Mont. R. Civ. P.

DEFINITIONS AND INSTRUCTIONS

Certain words used in these interrogatories have the meanings ascribed to them below, namely:

1. "Document" or "writing" refers to the original and all non-identical copies or reproductions of any written, printed, typed or recorded matter of any kind known to you or in the possession, custody or control of Defendants, their agents or attorneys, or persons under her control, or any of them, including but not limited to:

a. Letters, correspondence, electronic mail, telegrams, wires, memoranda, instructions, calendars, diaries, desk books, reports, studies, surveys, speeches, minutes, pamphlets, notes, records, charts, tabulations, accounting records, interoffice and intra-office communications, tape or other voice recordings, records of meetings, conferences, telephone conversations or other communications and drafts of any of the foregoing, including information stored on any electronic media, computer, etc.

b. Microfilm, microfiche or other reproductions or film impressions.

2. "Date" means the exact day, month and year if ascertainable; if not, the closest approximation that can be made thereto by means of relationship to other events, locations or matters.

3. "Persons" means natural persons, corporations, partnerships, governments (or agencies thereof), quasi-public entities, proprietorships, joint ventures, trusts, estates, and all other forms of legal entities.

4. "Identify" means, with respect to a natural person, to set forth that person's full name and, on the first occasion that such person is identified, the following information:

- a. Present or last known residence address;
- b. Present or last known business address;
- c. Present or last known employer;

5. "Identify" means, with respect to an entity other than a natural person, to set forth the full name or title of the entity and, on the first occasion that such entity is identified, to state the address and principal business or activity of such entity.

6. "Identify" means (regardless of whether any claim of privilege is asserted), with respect to a document, to set forth the following information, subject to the Option to Produce Business Records as provided by Mont. R. Civ. 33:

- a. The nature (e.g., letter, memoranda, report, etc.);
- b. The date it bears or, if undated, the date it was written or created;
- c. The identity of the person(s) who wrote or created it;

- d. The identity of the person(s) who received it;
- e. Its file number or other identifying mark or code;
- f. Its general subject matter;
- g. Its present or last known location and custodian.

7. "Identify" means, with respect to an oral communication or other event, to set forth the following information:

- a. Its substance;
- b. The date it occurred and the time;
- c. The place it occurred;
- d. For a communication, the identity of each originator and recipient; for an event, the identity of each participant;
- e. The identity of all persons present when the communication or event occurred.

8. The "State of Montana" means and refers to the State of Montana, all political subdivisions, the Attorney General and all other persons employed by or acting on the State of Montana's behalf.

9. "You" or "Your" means and refers to the State of Montana, all political subdivisions, the Attorney General and all other persons employed by or acting on the State of Montana's behalf.

10. "Attorney General Opinion" means the opinion from Attorney General McGrath dated December 3, 2007 to Ms. Rebecca A. Convery and published at 52 A.G. Op. 4.

COMBINED DISCOVERY REQUESTS

REQUEST FOR PRODUCTION NO. 1: Please produce all non-privileged documents that refer, relate or pertain to the Attorney General Opinion, including all documents on which the Attorney General Opinion is based.

RESPONSE:

INTERROGATORY NO. 1: Please identify all other Attorney General opinions or letters of advise wherein Title 7, Chapter 32 or Title 53, Chapter 30 of the Montana Code Annotated has been interpreted by the Montana Attorney General's office.

ANSWER:

REQUEST FOR PRODUCTION NO. 3: Please produce all documents identified in your response to Interrogatory No. 1.

RESPONSE:

INTERROGATORY NO. 2: Please identify all witnesses that have knowledge or information regarding the matters alleged in the Complaint in this action.

ANSWER:

INTERROGATORY NO. 3: Please identify all documents or other tangible things, including electronic mail, that in any way relate to, touch or concern the Two Rivers Detention Center, the Two Rivers Authority, or the Attorney General Opinion.

ANSWER:

REQUEST FOR PRODUCTION NO. 3: Please produce all documents, electronic mail, written statements or other tangible things identified in your response to Interrogatory No. 3.

RESPONSE:

INTERROGATORY NO. 4: Please identify all witnesses you expect to call in this matter and the substance of their expected testimony.

ANSWER:

REQUEST FOR PRODUCTION NO. 4: Please produce all documents you intend to use as Exhibits in this matter.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Produce all documents that refer, relate or pertain to placement of inmates by the Department of Corrections with any

detention center within the State of Montana for the period January 1, 2005 through the date of your response to this request.

RESPONSE:

Dated this 10th day of December, 2007.



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